

## **SECTION II**

### **Executive Summary**

The past 12 years of civil rights enforcement by the Department of Housing and Urban Development (HUD) have left America, and in particular people with disabilities, needing more. The late 1980s were characterized by a new commitment to equal housing opportunity: Congress passed the Fair Housing Amendments Act of 1988 (FHAA) and HUD finally promulgated regulations for the enforcement of Section 504 of the 1973 Rehabilitation Act. HUD was empowered to investigate and adjudicate discrimination complaints and to enforce compliance by recipients of federal funds. By the late 1990s, however, HUD had lost control of its own enforcement process, with investigations taking nearly five times as long as Congress mandated and with scarcely 100 cases annually concluding with findings of discrimination during each of the past six fiscal years.

Administrative enforcement of civil rights laws has been hampered by the failure of Congress and HUD to provide the level of resources that effective enforcement requires. Inconsistent and inadequate funding has caused some specific problems for HUD, especially concerning staffing and special enforcement initiatives. The bigger problem has been HUD's failure to provide consistent national leadership and management of the fair housing enforcement process. As a result, the promises of the fair housing laws have been empty for many Americans, with and without disabilities.

The primary focus of this report is the way in which HUD has conducted its administrative enforcement of the Fair Housing Act (FHA) and Section 504 of the 1973 Rehabilitation Act to counter discrimination in housing, and, in particular, HUD's record during the past 12 years in enforcing the rights of people with disabilities under these laws.

#### **A. Overview**

Housing discrimination undermines one of the fundamental premises on which our free society is based because it unfairly, and illegally, denies access to the accessible, affordable housing that people with disabilities need to live independent lives. Without effective and fair

enforcement of civil rights laws, people who are injured by housing discrimination lack recourse to remedies and rights that Congress passed in an express effort to achieve a country free from invidious discrimination. And without effective and fair enforcement of civil rights laws tied to increased education about those laws, people cannot know the ways in which discrimination may occur so they can avoid discriminating, and those that perpetrate discrimination will not be held accountable for their unlawful actions.

The absence of an effective fair housing enforcement system motivated Congress to pass the FHA and to invest HUD with strong authority to combat discrimination. This report concludes that ineffective enforcement has led to a loss of public trust that the protections of the FHAA and Section 504 will be enforced. When these important civil rights laws are not well enforced, individual victims of discrimination suffer, but the entire country also suffers as ignorance of, and disdain for, the laws increases. Nowhere is this more harmful than in the context of housing, where discrimination can have such a devastating impact on a person's ability to work, to attend school, to be involved in the civic life of the community, and to pursue all the variations on the American dream.

People with disabilities encounter illegal housing discrimination in many different ways: (1) inaccessible housing, (2) stereotypes about the ability to live independently, or (3) the inability to get modifications in rules or policies that have historically excluded people with disabilities. Housing discrimination artificially constricts the housing choice of people with disabilities; as a consequence, they may be forced to live in undesirable, dangerous, or unwelcoming neighborhoods. They may encounter harassment, intimidation, or unfair and illegal treatment.

At the same time, many in the housing industry seek answers to their questions about discrimination. Without answers to those questions, even unintentional discrimination may continue. This country still needs the prompt, effective civil rights law enforcement that impelled Congress to pass the FHA and Section 504.

In 1988, Congress, with strong bipartisan support, passed the Fair Housing Amendments Act, adding handicap and familial status (the presence of minor children in a household) as additional prohibited bases for discrimination and strengthening enforcement authority under the

law. Rights of people with disabilities to be free from discrimination in housing were considerably expanded because the amendments provided key protections to them and offered them, for the first time, rights to equal treatment and to reasonable accommodations in policies, procedures, and practices, and rights to have newly constructed multifamily housing designed and constructed to be usable by people with physical disabilities.

During the 1990s, people with disabilities increasingly filed discrimination complaints with HUD under the FHA, until they became the single largest group of complaints filed in fiscal years 1999 and 2000, amounting to nearly 42 percent of HUD complaints filed nationally.

During the same period, however, HUD's enforcement activities diminished. The number of complaints filed overall dropped dramatically, with the number of complaints in FY 2000 amounting to only 30 percent of their level in 1992. HUD's adoption of a new "claims" process designed to examine more closely potential complaints has resulted in many fewer complaints being filed and significant increases in the amount of time HUD takes to actually begin a complaint investigation.

The length of time HUD took to investigate cases increased dramatically from 1990 to 2000. The average age of complaints at their closure was 497 days in FY 2000, nearly five times the 100-day period that Congress set as a benchmark for projected case completion. There are significant regional variations in the duration of investigations as well.

HUD made some progress in its efforts to reduce the number of complaints that were "administratively closed" without a disposition during the mid-1990s. By FY 2000, however, that trend was reversing; about 20 percent of filed complaints were administratively closed, up from 15 percent in the mid-1990s. Between its claims process and its overuse of administrative closures, HUD is failing to deal effectively with many potential complaints.

Conciliations or settlements of complaints amount to close to half of the case resolutions. Investigations with findings of discrimination and decisions to pursue enforcement action can take more than a year and have been decreasing in number after reaching a relatively high point during the mid-1990s. The number of such decisions is only a small percentage of the cases HUD investigates. Decisions to dismiss cases with findings of no discrimination increased during the 1990s as well and often took longer than a decision to take enforcement action.

Overall, complaints involving discrimination based on disability are more likely to be settled by HUD, less likely to result in a finding that discrimination has occurred, and less likely to be dismissed after investigation compared with other cases. There are, however, wide and troubling differences in outcomes among HUD's various regional offices, suggesting that the kind of outcome a particular case reaches may be related to where a complaint is handled.

Even more troubling are the significant and serious deficiencies in HUD's overall history of enforcement. This study concludes that the devolution of case-processing responsibility combined with the leadership's attitude toward management and significant shortfalls in staffing and resources have caused these deficiencies. The last Administration's "hot case" and "doubling" enforcement action initiatives exacerbated these systemic flaws and made no discernable improvement in enforcement.

HUD's enforcement of Section 504 has been even more troubled. HUD had difficulties in adopting regulations implementing the law and its enforcement role. Funding has been limited for enforcement activities, and some significant successes in achieving compliance in individual situations have not been replicated.

There are only limited and inconsistent data by which to judge HUD's Section 504 enforcement efforts. The data that are available, however, show that both enforcement and compliance efforts have been marked by long delays resulting from the diversion of limited resources to other activities.

HUD has developed some important guidance, substantive and legal resources, and examples of good enforcement work. However, this information is not widely disseminated to HUD's own enforcement staff or to HUD program areas that could benefit from the information. In addition, this guidance has not been made available to individuals and entities affected by the law.

Good data collection systems and investigative management technology have been developed for FHA cases. Immediate expansion of these systems to support Section 504 enforcement and compliance work is an important priority for HUD.

The Fair Housing Initiatives Program (FHIP) was established by federal statute to fund private fair housing groups, state and local agencies, and advocates. FHIPs provide important

services to and products for people with disabilities. Unfortunately, because of poor record keeping and limited financial resources, FHIPs have been unable to produce or replicate these efforts.

FHIPs have raised concerns that HUD's management of the program has resulted in significant delays in providing funding to qualified recipients and a lack of focus on supporting the enforcement and education activities external to HUD that are a critical component of successful law enforcement.

Congress funds the Fair Housing Assistance Program (FHAP) to handle cases at state and local enforcement agencies. While regional differences exist, when compared to HUD, the 86 FHAP agencies have lower percentages of cases administratively closed and a higher percentage of complaints resulting in findings that the law has been violated. They are able to process complaints (including disability complaints) considerably more quickly than HUD. Despite reports of gaps in activity in cases and other performance issues, more effective HUD monitoring of FHAP could reasonably be expected to improve performance even more. Unfortunately, HUD has no sustained process for identifying and disseminating important lessons from the success of the FHAP operations.

This study found startling inadequacies in HUD's management operations and resources supporting enforcement over the past years. HUD's Strategic Plan, Annual Performance Plan, and Business and Operating Plan, all of which direct the priorities and activities of the Office of Fair Housing and Equal Opportunity (FHEO), have been seriously deficient in addressing enforcement and compliance activities, FHIP and FHAP performance, and efforts to improve the civil rights of people with disabilities. Significant work in improving the focus and content of HUD's planning is needed to drive the enforcement and compliance improvements recommended in this study.

Congress has failed to give HUD adequate appropriations to fund its enforcement and compliance activities. FHEO was staffed at lower levels in FY 2000 than it was in 1989, and increases in staff-to-manager ratios have impaired effective day-to-day management activity. The lack of financial resources has impaired staff training, travel, the ability to support education for the housing industry and the public, and funding for contracts and new initiatives.

This report concludes that HUD has a major challenge ahead of it to fulfill the promise of civil rights enforcement. Without staffing and funding resources, progress cannot and will not be made. Without strong and effective management of compliance and enforcement activities, combined with monitoring, training, technical assistance, and, if necessary, sanctions, progress cannot and will not be made. Without an organized, focused program, progress will not be made. The law is not the problem; the siting of enforcement activities at HUD is not the fundamental problem. The way in which the law is implemented is the problem confronting HUD and this country, and it is this problem that must be addressed now.

## B. Summary of Key Recommendations

This report makes a number of recommendations for improvement of HUD's administrative enforcement and compliance activities. These recommendations can be loosely grouped under five major categories:

- **The Administration, HUD, and Congress must improve the enforcement of disability rights guaranteed by the FHA and Section 504 of the Rehabilitation Act; ensure compliance by federal grantees; and make enforcement of disability rights laws a priority.**
- **The Administration, HUD, and Congress must ensure that current and future HUD budgets are increased so that adequate resources are provided for the enforcement of housing-related civil rights laws and for ensuring compliance by federal grantees.**
- **HUD must provide better guidance on the meaning of housing-related disability civil rights laws, including the FHA and Section 504, and must dramatically improve its collection of data about enforcement and compliance activities.**
- **HUD must improve its identification and dissemination of best practices concerning education, enforcement, and compliance activities.**

- **The Administration, Congress, and HUD (including its Office of Disability Policy and a National Consumer Advisory Committee) must work together to regain public trust in governmental enforcement and compliance activities.**

Detailed recommendations are summarized in Appendix I at the end of this report. But it is clear that prioritization among the many recommendations made for improvement requires, first and foremost, increased attention to and support of enforcement activities by our country's leadership. The degree of the deficiencies in many, if not most, aspects of the government's enforcement of these civil rights laws is so startling and so significant that change must be led from the very top levels of the Federal Government.

The next most significant group of recommendations focuses on addressing the lack of resources for HUD's civil rights enforcement activities. Without adequate resources, laws will not be effectively enforced. The absence of adequate numbers of staff, reliable funding streams for two statutorily created programs designed to advance enforcement, training and support funds, and data and technology funds have demonstrably hampered enforcement efforts in the past years.

HUD must gather, organize, and make available more information about the provisions of these laws and their interpretations and applications. Increased resources and funding could allow development of education, outreach, training, and technical assistance programs that would serve people protected against discrimination and particularly people with disabilities, housing providers, and others covered by the laws; HUD's own staff and program operations; and the general public. Increased education can both prevent discriminatory practices and reach victims of discrimination to advise them about their rights. Old and new cases, decisions, and interpretations can enable more effective enforcement as well as reducing or preventing discrimination.

HUD has undertaken positive enforcement and compliance activities during the period studied in this report, as have private fair housing groups and state and local enforcement agencies. The absence of effective systems to identify and replicate these best practices remains a major barrier to ongoing improvements in enforcement and compliance.

While following the recommendations described above should dramatically improve HUD's enforcement and compliance work, HUD must finally undertake specific actions that will help regain public trust in its work. The deficiencies that this report identifies have increased the reluctance of many to seek assistance from HUD and has helped create barriers to effective use of enforcement and compliance tools available to the government. The perception that HUD does not do its job efficiently or reliably must be dispelled, first by improved performance and then by affirmative steps to tell the Administration, Congress, advocates, and the public about its good work.

### **1. Improving Enforcement of Disability Rights and Ensuring Compliance by Grantees**

The new Administration and Congress should take positive action to address the deficiencies that this report identifies. Leadership and attention to enhancing civil rights enforcement from the Administration and Congress are critical to improvements in enforcing the laws that are designed to correct discriminatory practices.

Key elements to congressional and Administrative involvement include supporting—by funding, staffing, and management oversight—the efforts of the FHEO to enforce the laws. The office that has the sole responsibility for administrative enforcement of the FHA has fewer staff now than it did in 1989, when the FHAA was passed. It has less than half the staff dedicated to compliance activities that it did in 1989. The following are key recommendations in this area:

- Congress and the Administration should provide enhanced oversight to assess major deficiencies in enforcement and compliance, including evaluating the reasons the absolute number of cause findings, especially those in disability cases, have declined so precipitously; why there are wide variations on these indicators among the regional offices; why so many cases have been allowed to remain so much longer than the 100 days Congress set as a benchmark for case conclusion; and the ways in which screening of complaints before they are investigated may deter the pursuit of valid complaints.



- The Administration should request and Congress should allocate sufficient funding to ensure that there are adequate and qualified staff available to perform the tasks necessary for efficient enforcement.
- Congress and the Administration should support management initiatives that will focus—through HUD’s Strategic Plan, Annual Performance Plan, Business and Operating Plan, and other management tools—on improvements in day-to-day oversight and management of enforcement and compliance activities.
- The Secretary of HUD should act expeditiously to support each of these recommendations and should support expanding and strengthening the existing Office of Disability Policy (and include a National Consumer Advisory Committee) to provide input, guidance, and direction to the Secretary and to all of HUD’s program offices.
- FHEO should develop a comprehensive and organized Section 504 compliance program that should include, at a minimum, short- and long-term strategies for enforcing Section 504, a review of the successful ways that FHEO has worked with other HUD program offices to accomplish Section 504 compliance goals, establishment of systems for communication within HUD and with consumers and recipients, and coordination of the work of technical assistance, enforcement, and compliance and development of a systematic plan for improving responses to Section 504 complaints.

## **2. Dedicating Adequate Resources to Enforcement and Compliance Activities**

This report concludes that the lack of sustained, consistent resource support has seriously and adversely affected HUD’s ability to enforce civil rights laws. Inadequate numbers of intake, investigative, and mid-managerial staff, judged by standards identified in an independent study of Title VIII of the Civil Rights Act of 1968 (the FHA) enforcement, have contributed to ineffective enforcement and serious lapses in compliance activities. Lack of funds and staff for effective management of the Fair Housing Initiatives Program and the Fair Housing Assistance Program have caused shortfalls in their intended roles. Lack of contract funds has had serious effects on

HUD's ability to train its own staff, to develop new enforcement initiatives, and to support even minimal education and outreach activities.

The following are key recommendations:

- At a minimum, HUD should staff its Office of Fair Housing and Equal Opportunity with enough staff to ensure that each investigator carries no more than 15 cases at any one time. In addition, HUD should significantly increase its staff with persons knowledgeable about Section 504 investigations and compliance to ensure that it can maintain an effective Section 504 program without doing harm to its FHA enforcement and vice versa.
- HUD's Office of Counsel should evaluate its staffing of the fair housing and Section 504 function and ensure that there are adequate numbers of staff attorneys to support those functions.
- As part of its comprehensive effort to more effectively enforce the FHA, HUD should make much more extensive use of Secretary-initiated complaints.
- HUD should provide staff and other supportive resources that will enable FHEO to engage in monitoring of conciliation agreements and Voluntary Compliance Agreements. HUD should refer cases of noncompliance to the Department of Justice (DOJ) when compliance cannot readily be achieved.

### **3. Improving Policy Guidance and Data Collection**

A thorough understanding of civil rights laws is a basic requirement for fair enforcement. Those working to improve compliance must understand the nuances of the law, be up-to-date with new judicial and policy developments, and be able to apply the law consistent with its interpretations. This report describes serious shortfalls in HUD's provision of guidance for its own staff, the absence of systematized sources for policy and legal information about interpreting the laws, and even the lack of basic information about when the law applies.

In addition, HUD's current inability to provide even basic data about the products of its funded programs and about its enforcement and compliance outcomes allows differing and inconsistent interpretations and thereby can adversely affect the public and its own operations.

The following are key recommendations:

- FHEO's Title VIII enforcement handbook should be completed, updated, and treated as binding guidance for enforcement of the FHA for HUD as well as for state and local agencies enforcing laws that are equivalent to the FHA.
- FHEO should develop a similar comprehensive manual that addresses Section 504 enforcement and compliance.
- FHEO should develop an ongoing system to gather and make generally available its interpretations of the FHA and Section 504. The Office of Counsel should undertake, in conjunction with this effort, a similar project to compile legal opinions, interpretative documents such as letters and memoranda, and key court decisions. Such a system should permit ready access to ensure consistent application of the law, and FHEO and the Office of Counsel should consider establishing a method to make these interpretive decisions available publicly.
- Congress and HUD should fund a Civil Rights Training Academy that will provide basic and advanced skills training and substantive, legal, and technical training first for HUD staff, then for FHAP and FHIP.
- HUD's Secretary should strengthen the existing Office of Disability Policy and provide it with adequate staff and access to review program operations throughout HUD for compliance with the FHA and Section 504 and to advise the Secretary about corrective actions.
- FHEO should reinstate its process for issuing staff and interpretative guidance through memos, notices, and other mechanisms about new and important civil rights enforcement and compliance issues and make its guidance available to the public.

#### **4. Improving Identification and Dissemination of Best Practices**

As earlier recommendations are implemented, FHEO is expected to be able to collect and provide to others information about best practices in enforcement and compliance. Existing strategies that accomplish outstanding results should be recognized and honored.

- FHEO should develop systems that will permit it to identify outcomes and best practices among its regional offices, state and local enforcement agencies, and

private fair housing groups and make those materials and products accessible to its own staff, to other organizations, and to the public, where appropriate. In particular, FHEO should identify working strategies for community outreach (particularly to people with disabilities), intake, case processing, investigative strategies, and management techniques among its own staff and replicate them in other offices. A similar system should be developed to highlight products of state and local agencies and grantees. FHEO should memorialize unique enforcement and technical assistance efforts, compliance strategies, and other products through distribution of materials, training, and development of national initiatives.

- FHEO should identify the successful approaches it has used to address issues of Section 504 noncompliance and identify the resources and support necessary to apply those approaches to a national compliance strategy. FHEO should make its strategies public and use them to encourage general compliance as well as conduct compliance reviews.
- HUD should continue to explore ways in which it can use FHIP and contract funds to support collaborative work between full service fair housing agencies and organizations representing persons with disabilities.
- HUD should review and incorporate as many of the recommendations made by the Occupancy Task Force mandated by congressional action as are applicable to HUD's current programs and activities. It should determine whether the recommendations should be applied to programs and initiatives that did not exist when the recommendations were made in 1994 and the most effective ways of applying them.

## **5. Regaining Public Trust in HUD's Enforcement and Compliance Activities**

Without implementation of the leadership, resource, communication, and best practices initiatives that this report recommends, HUD will not be able to regain the trust of the public. With tools that can be developed to focus attention on the many significant accomplishments of FHEO, however, HUD will be able to highlight its contributions to ending discrimination. If Congress provides adequate funding, HUD performs its enforcement and compliance functions

effectively, and the systems are in place to identify successful work, HUD's achievements will speak for themselves.

- HUD should develop and implement a system to make its interpretations of civil rights laws generally available. HUD should provide adequate staffing and funding to support this effort.
- HUD should focus its resources on securing resolution of (and compensation in) a broad range of fair housing complaints rather than focusing on settlement of cases designed primarily to garner the most publicity for the agency.
- HUD should maximize the use of its World Wide Web site to inform the public that HUD's funding programs require recipients to comply with the FHA and Section 504.
- FHIP should move expeditiously to develop a comprehensive, organized system to identify outcomes, information, and materials developed as a result of the program and to make them available to the public, especially to organizations and individuals who deal with fair housing issues.

### C. Future Prospects

The Administration has taken some actions, and HUD has initiated some disability-related changes since October 1, 2000, the end date for the information covered in this report, that suggest support for future improvements in fair housing enforcement.

President George W. Bush, Vice President Richard Cheney, and Attorney General John Ashcroft have indicated support for fair housing enforcement and, in particular, for increased emphasis on disability rights. While it is too early to say whether this renewed support will make a significant difference in improving enforcement, it is a promising start.

HUD Secretary Mel Martinez has demonstrated his recognition of the importance of disability rights early in his tenure by meeting with several major disability rights organizations. He has also taken steps to implement several key aspects of President Bush's New Freedom Initiative, designed to assist Americans with disabilities by increasing access to assistive technologies and promoting increased access to community life. Among the President's

initiatives are implementation of the American Homeownership and Economic Opportunity Act of 2000, which provides opportunities for Section 8 voucher holders, including people with disabilities, to use those funds for down payment assistance in the purchase of a home.

The lack of management focus and limited staffing and resources remain critical problems in fair housing enforcement. Secretary Martinez's expressed commitments to staffing realignments and increases in management oversight and the use of technology to improve HUD's activities show promise for future enhancements of fair housing work because they have the potential to address problems identified in this report.

HUD has reported that it has engaged in a variety of initiatives to enforce the FHA's design and construction requirements, including completing a review of model building codes and developing, with others, changes to the International Building Code to develop a stand-alone document that publishes access standards for housing. HUD has let a \$1 million contract to develop a new training curriculum to provide national training on the FHA's accessibility requirements to a wide audience of builders, developers, architects, and advocates consistent with congressional direction in the FY 2001 budget report language. If Congress approves funding, this project is anticipated to provide accessibility training and technical assistance in an organized way. HUD's Office of Fair Housing and Equal Opportunity also reported that it has conducted six new training activities on a variety of accessibility issues, including a session for the National Association of Attorneys General on access issues and one for BANC One on tax credit housing, with particular emphasis on accessibility and Section 504, as well as more general sessions in Honolulu, Hawaii; Providence, Rhode Island; Pinellas County and Clearwater, Florida; and Maryland. In addition, HUD has announced that it plans to conduct a self-evaluation, as required by Section 504, in FY 2001.

FHEO has advised NCD that it intends to revise the HUD Strategic Plan to include the following language: "Enhance Section 504 enforcement efforts through increased guidance and technical assistance to field staff; increase compliance/monitoring activities; and coordinate such efforts within HUD and other Federal agencies." FHEO has also advised NCD that it intends to revise its FY 2002 Annual Performance Plan (APP) to provide specific measures and indicators to reduce housing discrimination against people with disabilities and that it will "incorporate

compliance strategies to specifically address Title VI/Section 504 compliance reviews for people with disabilities in the FY 2003 APP.”

These are worthy activities. As detailed in this report, however, much more needs to be done. HUD needs to work continuously with its various stakeholders to ensure that management and program reforms recommended in this report are implemented. HUD needs to work alongside NCD as part of this process. HUD also needs to ensure that its work in this regard incorporates the knowledge generated by the Interagency Council on Community Living, as well as the groundbreaking work being conducted around the Olmstead Initiative by the Department of Health and Human Services. It is time to restructure fair housing.